STATEMENT OF
CHAIRMAN FRANK H. MURKOWSKI
FOR
INTRODUCTION OF ELECTRICITY BILL

Mr. President, I rise to introduce legislation to promote competition in the electric power industry. This legislation is bipartisan, it is cosponsored by Senator Landrieu.

Let me first say that competition isn't the *goal* of this legislation. Instead, competition is the *means* to achieve the goal of assuring consumers reliable and reasonably-priced electricity.

We have seen great benefits from bringing competition to other industries such as natural gas, telecommunications, trucking and airlines. In each case, competition reduced prices, enhanced supply and encouraged innovation. There is every reason to expect that increased competition in the electric power industry will likewise benefit consumers. The Department of Energy agrees. It has projected consumer savings of $20 billion per year.

Great progress has already been made in both retail competition and wholesale competition. To date, retail competition programs have been adopted by 24 States, which cover 60 percent of U.S. consumers. All of the remaining States are now considering what kind of retail program would best meet their local needs. Competition has been brought to the interstate wholesale market through the enactment of the Energy Policy Act of 1992 and FERC's subsequent issuance of Orders No. 888 and 889.

So the legislative task facing Congress is to build on this progress, not to halt State progress on retail competition or to interfere with FERC progress on wholesale competition.

The question is: How do we get there from here? How do we move the electric power industry from regulation to competition? Should we preempt the States and substitute Federal regulation for State regulation, as some argue? Or should we instead deregulate to allow the market to operate?

To me the answer is obvious: Competition must be market-based, not government-run. We must stop having regulators pick winners and losers, making decisions that ought to be made by the marketplace. Substituting one regulator for another -- Federal for State -- isn't deregulation. It's just different regulation. Creating a one-size-fits-all Federal solution may work in some States, but it will not work in all States. For the market to work and for consumers to enjoy the benefits of competition, we need to free the market from undue government interference.

I have long said that the best way to move toward market competition is to deregulate what we can, streamline what we cannot deregulate, and to facilitate States moving forward on retail competition.

While I would like to deregulate the entire electric power industry, I recognize that some regulation will remain necessary to protect consumers. Where regulation is necessary, I believe that it should be performed by the unit of government closest to the consumer. However, where the matter to be regulated is in interstate commerce, FERC must be the regulatory agency. Traditionally, States have regulated retail matters directly affecting consumers, and the FERC has regulated wholesale sales and transmission in interstate commerce. The legislation I am today introducing retains this traditional division of authority between the States and the FERC.

I will now outline the key provisions of the legislation.

One key element of this legislation is the creation of a clear division of authority between the States and the Federal government. The legislation makes it clear that States are responsible for retail matters affecting consumers in their State, and the FERC is responsible for interstate matters. Thus, States will continue to be responsible for retail competition, and the FERC will continue to be responsible for wholesale competition.

This clarification is necessary because when the Federal Power Act was created in 1935, Congress did not foresee the current market and industry structure. As a result, there are now ambiguities as to the split in jurisdiction between the States and the Federal government. This has resulted in uncertainty and increasing litigation. Creating a jurisdictional "bright line" will help both States and the FERC move forward with their efforts to promote competition in their respective jurisdictions. Moreover, by creating clear lines of accountability, if things don't work right we will know exactly where to point the finger.

Another major aspect of this legislation is that it will protect the reliability of our electric power system. The legislation does so in two different ways. First, it creates a grid-wide reliability organization that is given the enforcement authority necessary to assure reliability. The language in the legislation is the industry-supported North American Electric Reliability Council proposal, plus additional reliability provisions proposed by Western Governors, State public utility commissions and State energy officials. However, as much as this new organization will help ensure reliability, it is not the long-term solution. The real solution is to promote competition, and that can only be accomplished though comprehensive legislation such as this.

This legislation also includes provisions to provide access

to all interstate transmission lines, not just those owned by investor-owned utilities. Under the Federal Power Act, Federally-owned utilities, State-owned utilities, municipally-owned utilities and cooperatively-owned utilities are all exempt from FERC's nondiscriminatory open access transmission program. These exempt utilities do not have to provide access to the transmission lines they own, as is required of investor-owned utilities. As a result, there are significant gaps in the transmission grid which adversely affects competition in the interstate wholesale power market. This legislation corrects that problem.

Another important aspect of this legislation is its confirmation that States are not prevented from protecting consumers on a variety of retail matters such as:

-- **distribution system reliability;**
-- **safety;**
-- **obligation to serve;**
-- **universal service;**
-- **assured service to low-income, rural and remote consumers;**
-- **retail seller performance standards; and**
-- **protection against unfair business practices.**

There are similar provisions which confirm that States are not prevented from imposing a public interest charge to fund State programs such as:

-- **ensuring universal electric service, particularly for consumers located in rural and remote areas;**
-- **environmental programs, renewable energy programs, energy efficiency programs and energy conservation programs;**
-- **providing recovery of industry transition costs;**
-- **providing transition costs for electricity workers hurt by restructuring; and**
-- **research and development on electric technologies.**

By including these provisions, my legislation will ensure that States and State public utility commissions are fully capable of protecting consumers and promoting the public interest.

The legislation also contains a number of other important provisions including repeal of PURPA's mandatory purchase requirement, repeal of PUHCA and assuring funding for nuclear power plant decommissioning.

One provision in this legislation that I expect to be controversial is eminent domain authority to construct new interstate transmission lines. The provisions of the bill make this construction authority available in situations where --

-- **there is a regional transmission planning process that provides for full public input, and is reviewed and approved by the FERC; and**
-- **the transmission project cannot otherwise be constructed either because the State does not have the necessary authority, or because the State has delayed action for more than one year; and**
-- **the FERC, through a formal public process with all legal rights protected, finds that the new transmission line is in the public convenience and necessity.**

When authorizing this construction, the legislation gives the FERC full authority to impose any requirements that are necessary to protect the public interest.

You might ask: Why include such a potentially controversial provision? There are three reasons.

The first reason is supply. We must have transmission lines if we are going to get electricity to consumers and industry. It is a simple fact of physics that you can't move electricity without power lines.

The second reason is market power. As you know, market power exists where there is more demand than an existing transmission line can handle -- a bottleneck. There are two possible ways to address a bottleneck. The first is full regulation of the bottleneck transmission facility, with regulators picking the winners and losers. But that does not solve the problem, it just allocates the problem. The other is the free market approach. Let those who want to move their electric power to market build a new transmission line around the bottleneck -- or at least have a credible threat to build if the owner of the bottleneck transmission line does not offer them a fair deal.

The third reason is reliability. Based on events over that past several years, it is clear that we need to enhance our transmission system if we are going to meet consumer needs during peak periods of demand.

For those who think eminent domain is a brand-new idea for energy facilities -- it isn't. The Federal Power Act already gives Federal eminent domain for hydroelectric dams and their associated electric transmission lines. Similarly, the Natural Gas Act gives Federal eminent domain for interstate natural gas pipelines. If it works for interstate natural gas pipelines, it will work for interstate electric transmission lines.

Turning now to regional transmission organizations, the legislation I am today introducing retains the RTO provisions that were in my draft bill. While Order No. 2000 has many good aspects -- its voluntary nature, flexibility, open architecture and transmission incentives -- it does have some serious deficiencies. I am especially concerned about two key issues.

First, Order No. 2000 prohibits any active ownership of

the RTO by a utility or market participant after a five year transition period. Oddly, this applies even to someone who only owns transmission. Clearly, this will discourage participation in RTOs by transmission owners.

Second, by denying transmission owners the ability to design and file complete transmission rates with FERC, Order No. 2000 creates confusion at best, and at worst it may deny transmission owners their rights under law to recover all of their prudently incurred costs.

If these and other deficiencies are not corrected, FERC Order No. 2000 may be litigated for years, creating great uncertainty in RTO formation. In light of the increasing concerns about grid reliability, delay in RTO formation would be particularly troublesome as Order No. 2000 makes RTOs directly responsible for short-term reliability.

Let me mention some significant matters that need to be addressed during in the legislative process.

For example, there is the important issue of streamlining and speeding up the FERC merger review process. Utilities are rightfully distressed that FERC's process takes far too long and is much too cumbersome.

We also need to consider the creation of a universal service fund -- similar that which Congress included in the telecommunications legislation. This would help areas which do not have access to reliable and affordable electricity. And yes, there are regions of the United States where electricity is not taken for granted.

Another controversial issue that we must deal with in the context of comprehensive legislation is the tax-exempt municipal bond issue, creating a level competitive playing

field between investor-owned utilities and municipally-owned utilities. Under the U.S. Tax Code municipally-owned utilities can issue tax-exempt bonds to build new generation, transmission and distribution facilities, but investor-owned utilities can not issue tax-exempt bonds for these purposes. This gives municipally-owned utilities a taxpayer-provided competitive advantage to the extent they are able to use facilities built with tax-exempt bonds to compete against private power -- who can not use tax-exempt bonds in the same way. But on the flip-side -- under the tax code municipal tax-exempt bonds are subject to a "private use" limitation. This means that if municipal utilities go too far in competing against private utilities -- if they exceed their "private use" limitation allowed by the irs regulation -- then their bonds are subject to retroactive taxation. This limits the ability of municipal utilities to compete in the market. The bottom line? We have a tax code that is not consistent with today's competitive environment, putting both municipal utilities and private utilities are at risk.

Although this issue must be addressed, it is not a part of the legislation I am introducing because is a tax code issue that is now before the finance committee. Both the Administration and Senator Gorton have legislative proposals pending before the finance committee. I call upon the industry -- private power and public power -- to work out their differences and to bring congress a compromise proposal -- that both sides can live with.

There are also a number of other regional issues that will need to be addressed as a part of comprehensive legislation. For example, we need to resolve the role of the Federal power marketing administrations in the marketplace -- including the Bonneville power administration. We also need address the role of one of the largest utilities in the united states -- the Tennessee Valley Authority.

Mr. President, I am convinced that by promoting competition in the electric power industry and by addressing the reliability issue, this legislation will benefit consumers, our economy and our international competitiveness. Like the Secretary of Energy, I believe that it is now time to move forward with legislation. I hope that my colleagues agree.